JAMES P. WITMER

IBLA 71-76 Decided September 29, 1972

Appeal from a decision of the Eastern States land office denying appellant's request for approval of partial assignment of acquired lands of oil and gas lease BLMA 063835(F).

Affirmed as modified.

Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Assignments or Transfers

Where approval is sought for partial assignment of an acquired lands oil and gas lease of less than a quarter - quarter section, the assignment is of less than a legal subdivision under 43 CFR 3106.3-2 (1972) and there must be clear and convincing evidence of the necessity thereof or approval is properly refused.

Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Assignment or Transfers

Dictum: Where a communitization agreement approved by the Geological Survey segregates an uncommunitized parcel of less than a quarter-quarter section, the required necessity for an assignment of the parcel under 43 CFR 3106.3-2 (1972) would be established.

APPEARANCES: James P. Witmer, pro se.

OPINION BY MR. GOSS

James P. Witmer has appealed from a decision of the Eastern States land office dated August 21, 1970, which denied his request

for approval of partial assignment of 13.3 acres 1/ from acquired lands oil and gas lease BLMA 063835(F). On August 26, 1964, James Witmer assigned oil and gas lease BLMA 063835(F) to Jones-O'Brien, Inc. Subsequently, in November 1964, Jones-O'Brien, Inc., assigned an undivided one-fourth interest each to James E. Kemp and Robert Cargill, Jr. On November 17, 1964, a communitization agreement was approved which embraced a portion of the lease. On July 27, 1970, James P. Witmer submitted for approval the partial assignment of BLMA 063835(F) herein concerned, executed in his favor by the three record title holders. The proposed partial assignment does not cover all of that part of the lease outside the area of the communitization agreement.

The land described in the proposed partial assignment is in two separate parcels. One parcel (herein designated Parcel 1) is the SE 1/4 NE 1/4 NW 1/4 sec. 18, T. 4 N., R. 1 W., W.M., Mississippi; however, adjoining that parcel is a portion of the SW 1/4 NE 1/4 NW 1/4 sec. 18. If the assignment were approved, that portion of a quarter-quarter section would remain in the lease. The other parcel (herein designated Parcel 2) in the assignment is a triangular shaped piece of land within the N 1/2 SW 1/4 NW 1/4 sec. 18, described by metes and bounds which contains all of the land within the SW 1/4 NW 1/4 sec. 18, which is not within the communitization agreement. Parcels 1 and 2 thus present different factual considerations.

By decision dated August 21, 1970, the Eastern States land office denied the requested approval stating:

> Geological Survey has examined the request for approval of an assignment segregating 13.3

1/ There is a discrepancy as to the amount of land covered by the assignment. BLMA 063835(F) contains forty acres and embraces: T. 4 N., R. 1 W., W.M., Mississippi, sec. 18: N 1/2 SW 1/4 NW 1/4, S 1/2 NE 1/j NW 1/4. The land office decision and appellant's statement of reasons refer to 13.3 acres as the amount of land included in the assignment. The assignment reads:

"* * * 13.3 acres described as follows: Section 18: SE 1/4 NE 1/4 NW 1/4, and N 1/2 SW 1/4 NW 1/4 less and except 16.7 acres included in U.S.A. Unit # 18-6 by Communitization Agreement dated November 1, 1964, * * *." (Metes and bounds description attached)

The metes and bounds description refers to the portion of land contained in N 1/2 SW 1/4 NW 1/4 and states that it contains 5.567 acres, more or less. That amount plus the 10 acres contained in SE 1/4 NE 1/4 NW 1/4 would equal 15.567 acres.

> acres from the captioned lease and reports . . . "and we see no reason why the requested segregation is necessary to communitize leasehold acreage not committed to Com. Ag. MC-91. We recommend that the assignment be denied."

Appellant contends on appeal:

(1) That when he originally assigned BLMA 063835(F) to Jones-O'Brien, Inc., in August 1964 there was an "understanding and agreement" that lands not included within a drilling unit were to be reassigned to appellant.

(2) If the assignment is approved, he will be able to contribute the land to a proposed drilling unit and possibly the United States could benefit from additional royalties.

Section 30(a) of the Mineral Leasing Act, as amended, 30 U.S.C. § 187a (1970), authorizes the lessee of an oil and gas lease to assign the whole or part of his lease. It provides in part:

> Notwithstanding anything to the contrary in section 187 of this title, any oil or gas lease issued under the authority of this chapter may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, * * *
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> The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: Provided, however, That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision. * * *

The proviso allows the Secretary to exercise his discretion in approving or disapproving the partial assignment of leases of less than a legal subdivision.

Because the Mineral Leasing Act of 1920 (41 Stat. 443) was not applicable to acquired lands, Congress in 1947 enacted the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970). The legislative history of the Act of 1947 indicates that the purpose of the Act was to extend the mineral leasing laws applicable to public domain lands to all acquired lands, with certain exceptions. H.R. Rep. No. 550, 80th Cong., 1st Sess. 2 (1947). Section 352 sets forth the authority for the Secretary to lease deposits of oil and gas under the same conditions as set forth in the Mineral Leasing Act, supra, subject to exceptions not applicable here. In addition, rules and regulations promulgated under the mineral leasing laws were made applicable to acquired lands by 30 U.S.C. § 359 (1970) which provides:

> The Secretary of the Interior is authorized to prescribe such rules and regulations as are necessary and appropriate to carry out the purposes of this chapter, which rules and regulations shall be the same as those prescribed under the mineral leasing laws to the extent that they are applicable.

The regulation pertinent to this appeal is 43 CFR 3106.3-2 (1972) which reads as follows:

> An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity thereof is established by clear and convincing evidence.

By this regulation the Secretary has established the Department policy that the Balkanization of oil and gas leases by assignment of parts of legal subdivisions will be permitted only when the necessity therefor has been clearly shown. The regulation is apparently based, at least in part, upon economy and administrative convenience.

Appellant seeks the approval of assignment of two parcels within two separate quarter-quarter sections. For purposes of 30 U.S.C. § 187a (1970), and regulations thereunder, the smallest legal subdivision in a regular section has been interpreted to mean a quarter-quarter section. Solicitor's Opinion, 76 I.D. 108 (1969). Appellant must therefore show by clear and convincing evidence the necessity for segregating the acreage proposed to be assigned. Although the term necessity does not have a fixed meaning, it has been defined as the quality or state of being necessary, unavailable, or absolutely

requisite; inevitableness; indispensableness. Chadwick v. Stokes, 162 F.2d 132, 134 (3rd Cir. 1947).

As indicated above, Parcel 1 does not include all of the leased land remaining outside the communitization agreement within that particular quarter-quarter section. Appellant's contention that the record owners originally agreed to reassign to him lands not included in a drilling unit is not material to the issue of necessity. The agreement itself was not part of the original assignment, and it is not contained in the record.

Also appellant urges that if the land is reassigned to him, he would be in the position to contribute it to a proposed new well which might produce additional royalties for the United States. Appellant has produced no evidence to show why the present record owners would withhold the acreage from a new, desirable communitization agreement.

None of the reasons offered by appellant is sufficient to justify approval of an assignment of Parcel 1, which would leave another parcel of less than a quarter-quarter section remaining in the noncommunitized portion of the lease. To this extent the decision appealed from is affirmed.

As to Parcel 2, all other acreage in the SW 1/4 NW 1/4 sec. 18 was committed to a communitization agreement approved by the Geological Survey. The fact that this area is the only acreage uncommunitized in the SW 1/4 NW 1/4 sec. 18 establishes the necessity of allowing the assignment of this isolated acreage. Any assignment of the remaining land in the quarter-quarter section outside the communitization agreement area must necessarily be of a parcel which is part of a quarter-quarter section. This fact is sufficient reason to establish the necessity required by the regulation.

Although appellant has not requested assignment of Parcel 2, if such a request is made the assignment should be approved, assuming the requirements of the law are otherwise met. Before approval of any assignment, however, the question of the acreage discrepancy (see, n. 1) should be clarified.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decision appealed from is affirmed as modified.

Joseph W. Goss
Member

We concur:

Anne Poindexter Lewis
Member

Joan B. Thompson
Member